THE
MADRAS LAW JOURNAL.

I] FEBRUARY [1939

FEDERAL COURT AND JUSTICIABLE DISPUTES UNDER THE GOVERNMENT OF INDIA ACT, 1935.*

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I. External affairs and the Implementing of Treaties and Agreements.

These words suggest the intention of the Imperial Government to grant to the Federal Government the right to enter into treaties and dealing in a way with political and external affairs arising between the Federated India and any other part of the empire or through His Mr 'sty's representative with any foreign power. In the Leagr of Nations adumbrated by the Peace Conference in 1919, India has become a prominent member of the league. And if treaties and agreements were to be entered into amongst the various nations to adopt a particular line of policy, it will become incumbent on the Indian Federation to enact laws in fulfilment of those treaties and agreements. As an illustration of Acts in fulfilment of treaty obligations may be taken The Italian Loans and Credit Prohibition Act I of 1936 passed by the Indian Legislature on 21st April, 1936, prohibiting from giving loans, etc., to Italy. The preamble is, whereas it is expedient in pursuance of the obligations imposed upon India as a signatory to the covenant of the League of Nations by Art. 16 thereof to prohibit the making of certain loans and credit, it is hereby enacted as follows:—

S. 2 says that:

"No person shall make or contribute to or participate in or assist in making or issuing any loan to or for the benefit of the Government of any Italian territory."

*Lecture IV.

It might be added that this Act was repealed immediately the late Abyssinian war came to an end. But if those laws cover a subject within the Federal list, the Federal legislation is valid and *intra vires*. But supposing the line of policy requires an enactment on a provincial subject then the legislation may ordinarily be *ultra vires* and invalid. An interesting case illustrating a similar position arose in Canada which went up to the Privy Council, *Attorney-General of Canada* v. *A. G. of Ontario and others*, (1937) A.C. 326. The Dominion Parliament of Canada, to give effect to the draft convention adopted by the International labour organisation of the League of Nations in accordance with the labour part of the Treaty of Versailles, 1919 and ratified by the Dominion, passed the Weekly Rest in Industrial Undertakings Act, 1935, the Minimum Wages Act, 1935 and the Limitation of Hours of Work Act, 1933. The Acts were challenged by the province of Ontario as *ultra vires* of the Parliament of Canada and invalid in that the legislation related to matters coming within the class of subjects "property and civil rights in the province" which was an exclusively provincial subject. The Privy Council remarked that:

> "No further legislative competence was obtained by the Dominion from its accession to international status and the consequent increase in the scope of its executive functions. There was no existing constitutional ground for stretching the competence of the Dominion Parliament so that it became enlarged to keep pace with enlarged functions of the Dominion executive If the new functions affected the classes of subjects enumerated in S 92, legislation to support the new functions was within the competence of the provincial legislatures only; if they did not, the competence of the Dominion Legislature was declared by S. 91 and existed *ab origine*. The Dominion could not, merely by making promises to foreign countries, clothe itself with legislative authority inconsistent with the constitution which gave it birth."

But if such a legislation were enacted in India by the Federal Legislature, in accordance with such treaty, it would be *intra vires*, as the legislation would fall under "Regulation of Labour" in the Federal list. But take a case in which the Federal legislature in implementing its international treaty obligations has to cover a subject which is not within the Federal list. Then what is to happen? S. 106 of the Government of India Act of 1935, gives the answer.

It says that from the fact that in the Federal list mere reference is made to the power of the Federal legislature to enact laws for implementing international treaties, it does not follow that the Federal legislature has got power to enact them.

without obtaining the previous sanction of the Governor or the ruler of the province or the state as the case may be. But if the Federal list contains the subject in respect of which a law is made by way of implementing treaties, then it will be binding on the whole Federation including the provinces and the states.

An interesting case come before the Supreme Court of the United States in *Missouri* v. *Holland*, 252 U. S. 416. For the protection of migratory birds, a treaty was entered into between the United States of America, and Great Britain. The treaty recited that many species of birds in their annual migration traversed certain parts of the United States and of Canada, that they were of great value as a source of food and in destroying insects injurious to vegetation, but were in danger of extermination through lack of protection. It therefore provided specified closed seasons and protection in other forms and agreed that the two powers would make necessary laws for carrying out the treaty. The United States passed an Act in pursuance of the treaty and prohibited killing, capturing or selling any of the migratory birds. The state of Missouri brought a suit against the game warden of the United States from enforcing the Migratory Bird Treaty Act on the ground of its unconstitutional interference with the sovereign right of the state and on the ground that the state is entitled to migratory birds found in it. Mr. Justice Holmes held that the statute is valid and observed:

"The state founds its claim on exclusive authority upon an assertion of title to migratory birds. No doubt it is true that as between a state and its inhabitants the state may regulate the killing and sale of such birds but it does not follow that its authority is exclusive of paramount power . . . Wild birds are not in the possession of any one and possession is the beginning of ownership. The whole foundation of states-rights is the presence within their jurisdiction of birds that yesterday had not arrived, to-morrow may be in another state and in a week a thousand miles away . . . Valid treaties are binding within the territorial limits of states, as are elsewhere throughout the Dominion of the United States."

(*Baldwin* v. *Frank*, 120 U. S. 678, 685.)

"Here a national interest of very nearly the first magnitude is involved. It can be protected only by national action in concert with that of another power. The subject matter is only transitorily within the state and has no permanent habitat therein. But for the treaty and the statute there might be no birds for any power to deal with. We see nothing in the constitution that compels the government to sit by while a good food supply is cut off and the protectors of our forests and our crops are destroyed. The reliance is vain and were it otherwise the question is whether the United States is for-

bidden to act. We are of opinion that the treaty and the statute must be upheld."

But if such a treaty were to be entered into by the Federal Government of India, it could not legislate without the previous sanction of the Governor of the province or the Ruler of the state under S. 106 of the Act, as migratory birds are wild birds and 'wild birds' are in the Provincial list.

Sometimes difficult questions might arise as to the real scope and ambit of such international treaty or agreement, such as whether an Act passed by a province contravenes that international treaty or agreement. Such a case arose in the Supreme Court of the United States in *Heim* v. *McCall*, 239 U.S. 175, where the question was whether the equality of rights and privileges with citizens of the United States with respect to the security for persons and property, which the citizens of Italy are assured by the Italian treaty of February 26, 1871, is not infringed by the Labour Law of New York, N.Y. Consol Laws, Ch. 31, S.14, which stated that only citizens of the United States may be employed in the construction of public works by or for the state or a municipality and that in such employment citizens of New York must be given preference. The relevant provisions of the treaty of 1871 said:

"The citizens of each of the high contracting parties shall receive in the states and territories of the other most constant protection and security for their persons and property, etc. Construing the provisions of the treaty, the court of appeals decided that it does not limit the power of the state, as a proprietor, to control the construction of its own works and the distribution of its own moneys. The treaty with Italy was considered in *Patsone* v. *Pennsylvania*, 232 U.S. 138, where it was held that a law of Pennsylvania making it unlawful for unnaturalised foreign born residents to kill game, and to that end making the possession of short-guns and rifles unlawful did not violate the treaty. Adopting the declaration of the court below, it was held that the equality of rights that the treaty assures is equality only in respect of protection and security for persons and property."

II. Taxing Power—its Distribution

The principle of distribution of taxing power between the Federal and the Provincial legislatures, unlike the one on the basis of the direct or indirect legislation as in the Dominion of Canada and the Commonwealth of Australia, is based on the principle that matters relating to the whole of Federated India are made federal subjects and matters relating to a constituent part thereof are made provincial subjects. For instance import and export duties on the customs frontiers, duties on customs,

excise duties on tobacco and other goods manufactured in India except alcoholic liquors, opium, Indian hemp and other narcotic drugs or any toilet or medicinal preparations containing them, taxes on non-agricultural income, succession duties on non-agricultural land, taxes on corporations and on the capital value of assets, terminal taxes on goods carried by rail or air—are all subjects for federal legislation. Whereas, taxes on alcoholic liquors aud opium and Indian hemp and other narcotics medicinal and toilet preparations containing them, taxes on agricultural lands, capitation tax and professional tax and taxes on business, taxes on animals and boats and on sale of goods and on advertisements, cesses on the entry of goods into local area for use therein and taxes on mineral rights, not covered by an Act of the Federal legislature relating to mineral rights are all subjects for provincial legislation.

III. The Federal Powers of Taxation—(a) Taxes defined

Taxes have been defined to be "burdens or charges imposed by the legislative power upon persons or property to raise money for public purposes". Cooley, Constitutional Limitations, 7th Edn., p. 678. They

> "differ from forced contributions, loans and benevolences of arbitrary and tyrannical periods in that they are levied by the authority of law, and by some rule of proportion which is intended to insure uniformity of contribution and a just apportionment of the burdens of Government." (Cooley on Taxation, Chap. I.)

The levying and collection of taxes amounts to the taking of private property for a public use, but the taxing power is distinct from that of what is known in the United States as Eminent Domain.

The Extent of the Taxing Power

In *McCulloch* v. *Maryland*, 4 Wheat. 316, Marshall, C. J., says:

> "The power of taxing the people is essential to the very existence of government, and may be legitimately exercised on the objects to which it is applicable to the utmost extent to which the government may choose to carry it. The only security against the abuse of this power is found in the structure of the Government itself. In imposing a tax, the legislature acts upon its constituents. This is in general, a sufficient security against erroneous and oppressive taxation. The people of a state, therefore, give to their government a right of taxing themselves and their property and as the exigencies of the government cannot be limited, they prescribe no limit to the exercise of this right, resting confidently on the interest of the legislator and on the influence of the constituents over their representatives to guard themselves against its abuse."

The power to tax, Marshall, C.J., concludes, "involves the power to destroy". In *Veasie Bank* v. *Fenno,* 8 Wall. 533, it was contended before the Supreme Court that the tax was so excessive as to destroy the franchise of the bank and was therefore beyond the constitutional power of Congress. The court held that

"the answer to this is that the judicial cannot prescribe to the legislative department of the government limitations upon the exercise of its acknowledged powers. The power to tax may be exercised oppressively upon persons, but the responsibility of the legislature is not to the courts, but to the people by whom its members are elected."

Tax, Duty, Imports, Excise compared

Under S. 311 (cl. 1) of the Government of India Act of 1935, taxation includes the imposition of any tax or import whether general or local or special, and tax shall be construed accordingly. The terms 'Duty' and 'Import' have at times a meaning broad enough to make them practically synonymous with the general term 'tax', but, used in a more specific sense, they refer to customs or customs dues levied upon goods imported from foreign countries.

An excise is an internal tax levied upon manufacture, sale or use of a thing and is thus often termed a consumption tax. *Sec* In the matter of the *Central Provinces and Berar Sales of Motor Sprit and Lubricants Taxation Act, 1938 (XIV of 1938),* (1939) 1 M.L.J. Supplement at p. 31. In the United States an excise has come to mean practically all taxes other than ustoms dues or duties . . . . Thus, excise taxes are, in general, known as internal revenue duties and as a rule their imposition is provided for in what are known as "Internal Revenue Act", as distinguished from "Tariff Acts" which fix the customs duties to be imposed upon imports from foreign countries. See Willoughby on the Constitution of the United States, Vol. II, S. 392.

III. (b) **Exemption from Taxation**

Ss. 154 and 155 of the Government of India Act of 1935 exempt certain property from federal or provincial taxation. S. 154 exempts from all federal or provincial taxes all property vested in His Majesty for purposes of the Federation. But if that property is liable to be taxed under any law before the Federation comes into existence, it may be exempted from such taxes by any federal law: otherwise the liability will continue so long as that tax continues. S. 155 exempts from federal

taxation the Government of a Province or a Ruler of a federated state in respect of lands or buildings situated in British India or any income accruing, arising or received in British India. But if any trade is carried on by or on behalf of the Government of a Province in any other part of British India, or by a Ruler in any part of British India, he is not exempted: nor is he exempted in respect of lands or buildings being his personal property; nor in respect of income being his personal income. But this will not affect the exemption enjoyed by a Ruler at the time of the passing of the Government of India Act in respect of any Indian Government securities issued before that date. But the federal legislature has power to tax such property, lands or buildings which His Majesty's Governor or the Ruler of a federated state has really conferred upon a subject but not where no estate or interest has been so conferred. *See* Canada's Federal System by A.H. Lefroy Edn. (1913), p. 415.

III. (c) Provincial Taxing Federal

The Federal Legislature under its power to tax non-agricultural income have power to tax the salaries . f Provincial officers, working in the Provinces. Have the Provincial Government the right to tax the salaries of Federal officers, working in the Provinces? The Government of India Act of 1935 does not permit the Provinces to levy an income-tax on non-agricultural income. But it can levy a professional tax on the federal officers. In a case from Australia in *Webb* v. *Outrim*, (1907) A.C. 81, the Privy Council held that an officer of the Australian Commonwealth resident in Victoria, and receiving his salary in that State, is liable to be taxed in respect thereof for income-taxes imposed by an act of the Victorian Legislature. Their Lordships held that there being no express provision in the Commonwealth Act restricting the Victorian Legislature from imposing such a tax, the income-tax is valid.

A question might arise whether under the Government of India Act of 1935, a Province might tax a corporation created by the Federal Legislature. No doubt the Federal Legislature can impose a tax on such corporations. But supposing the Provincial legislature imposes a tax on a federal corporation carrying on its business in the province, would it be valid? It is submitted that there is nothing to show that it has got such a power, except it be that the Provincial Legislature enact the

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laws under the subject of "Taxes on professions, trades, callings or employments" under the Provincial list in Schedule VII.

In the well-known case of *McCulloch* v. *The State of Maryland,* 4 Wheat, 316, the Supreme Court of the United States denied the right of the Provincial Legislature to tax a federal corporation. The Congress incorporated the Bank of the United States which established a branch in Baltimore. The Legislature of Maryland passed an Act to impose a tax on all the banks or branches thereof, in the state of Maryland, not chartered by the Legislature. McCulloch, the cashier of the branch at Baltimore, having issued notes upon the unstamped paper in violation of this Act, the suit was brought against him. In the course of the argument, the power of the state to tax such a bank was called in question. The Chief Justice Marshall while holding that the tax is unconstitutional observed as follows:—

"It has also been insisted that as the power of taxation in the general and state governments is acknowledged to be concurrent, every argument which would sustain the right of the General Government to tax banks chartered by the states will equally sustain the right of the states to tax banks chartered by the General Government and have conferred upon it the general power of taxation. The people of all the states and the states themselves, are represented in Congress, and, by their representatives, exercise this power. When they tax the chartered institutions of the states, they tax their constituents: and these taxes must be uniform But when a state taxes the operations of the Government of the United States, it acts upon institutions created not by their own constituents, but by people over whom they claim no control. It acts upon the measures of a Government created by others as well as themselves, for the benefit of others in common with themselves. The difference is between the action of the whole on a part, and the action of a part on the whole, between the laws of a Government declared to be supreme, and those of a Government which when in opposition to those laws, is not supreme.

"But if the full application of this argument could be admitted, it might bring into question the rights of Congress to tax the state banks, and could not prove the right of the states to tax the Bank of the United States. The court has bestowed on this subject its most deliberate consideration. The result is a conviction that the states have no power by taxation or otherwise to retard, impede, burden, or in any manner control, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government. This is, we think, the unavoidable consequence of that supremacy which the constitution has declared. We are unanimously of opinion that the law passed by the legislature of Maryland, imposing a tax on the Bank of the United States is unconstitutional and void. This is a tax on the operations of the Bank, and is, consequently, a tax on the operation of an instrument employed by the Government of the Union to carry on its powers into execution. Such a tax must be unconstitutional."

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This doctrine is known as the doctrine of Immunity of Instrumentalities. But in *Bank of Toronto* v. *Lambe*, (12 A. C. 575, the Privy Council held that a Quebec Act (45 Vic., c. 22) which imposed certain direct taxes on certain commercial Federal corporations (banks) doing business in the province is *intra vires* of the Provincial Legislature. Their Lordships at page 587 pointed out the contrast between provincial powers in Canada, and State powers in the United States as follows:—

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"Their Lordships have been invited to take a very wide range on this part of the case, and to apply to the construction of the Federation Act the principles laid down for the United States by Chief-Justice Marshall. Every-one would gladly accept the guidance of that great judge in a parallel case. But he was dealing with a constitution of the United States. Under that constitution, as their Lordships understand, each state may make laws for itself uncontrolled by the Federal power, and subject only to the limits placed by law on the range of subjects within its jurisdiction. In such a constitution C. J. Marshall found one of those limits at the point at which the action of the State legislature came into conflict with the power vested in Congress. The appellant invokes that principle to support the conclusion that the Federation Act must be so construed as to allow no power to the provincial legislatures under S.92 which may by possibility, and if exercised in some extravagant way, interfere with the objects of the Dominion in exercising their powers under S. 91. It is quite impossible to argue from the one case to the other. Their Lordships have to construe the express words of an Act of Parliament which makes an elaborate distribution of the whole field of legislative authority between two legislative bodies, and at the same time provides for the federated provinces a carefully balanced constitution, under which no one of the parts can pass laws for itself except under the control of the whole acting through the Governor-General. And the question they have to answer is whether the one body or the other has power to make a given law If they find that on the due construction of the Act a legislative power falls within S. 92, it would be quite wrong of them to deny its existence because by some possibility it may be abused, or may limit the range which otherwise would be open to the Dominion Parliament"

III. (d) Can the salary of a Federal or a High Court Judge be taxed under the Government of India Act of 1935?

S. 201 and S. 221 of the Government of India Act says neither the salary of a Federal Judge nor of a High Court Judge respectively shall be varied to his disadvantage after his appointment. *See* the corresponding S. 104 of the previous Government of India Act of 1919. Ordinarily such a case may not come before the Federal Court for decision, for very few judges would think of questioning the right of the legislature to impose a tax applicable to all. But suppose the tax levied is so exorbitant as to substantially vary their salary, in which case the question is likely to be raised, to get a final ruling on the

matter considering the difference in judicial opinion on this point. A similar case arose before the supreme Court of the United States of America in *Evans* v. *Gore,* 253 U.S. 245, where the supreme Court held that the salary of a Federal judge is not liable to be so taxed, since Art. 3, S. 1 provides that the compensation of such a judge shall not be diminished during his continuance in office. In that case the question arose whether the tax on a federal judge's salary is valid. "Whether he could be subjected to such an income-tax in respect of his salary, consistent with the constitution, is the matter in issue. If it be resolved against the tax, he will be entitled to recover what he paid; otherwise his action must fail. It did fail in the District Court. The relevant provision we are concerned with is:

'The judges both of the superior and inferior Courts shall hold their offices during good behaviour and shall at stated times receive, for their services as compensation which shall not be diminished during their continuance in office.'

"Stated in its broadest aspect, the contention involves the power to tax the compensation of federal judges. . . . . . Because of the individual relation of the members of this Court to the question thus broadly stated we cannot but regret that its solution falls to us, and this although each member has been paying the tax in respect of his salary voluntarily and in regular course.

"With what purpose does the constitution provide that the compensation of the judges, *"shall not be diminished* during their continuance in office"? Is it primarily to benefit the judges or to promote the public weal by giving them independence which makes for an impartial and courageous discharge of the judicial function? Does the provision merely forbid direct diminution, such as expressly reducing the compensation from a greater or less sum per year, and thereby leave the way open for indirect, yet effective diminution, such as withholding or calling back a part as a tax on the whole? Or does it mean that the judge shall have a sure and continuing right to the compensation, whereon he confidently may rely for his support during his continuance in office, so that he need have no apprehension lest his situation in this regard may be changed to his disadvantage?. . . . . The particular need for making the judiciary independent was elaborately pointed out by Alexander

Hamilton in the Federalist: No 78, from which we excerpt the following:

'The executive not only dispenses the honours, but holds the sword of the community. The legislature not only commands the purse but prescribes the rules by which the duties and rights of every citizen are to be regulated; the judiciary, on the contrary, has no influence over either the sword or the purse; no discretion either of the strength or of the wealth of the society; and can take no resolution whatever—Mr. Hamilton said in explanation and support of the provision (in Federalist: No 79). Next to the permanency in office, nothing can contribute more to the independence of the judges than a fixed provision for their support. In the general course of human nature, a power over a man's subsistence amounts to a power over his will.'

"These consideration make it very plain that the primary purpose of the prohibition against diminution was not to benefit the judges, but to attract good and competent men to the Bench and to promote that independence of action and judgment which is essential to the maintenance of guaranties, limitations and pervading principles of the constitution, and to the administration of justice without respect to persons, and with equal concern for the poor and the rich. . . . . . . Obviously, the diminution may be direct or indirect or even evasive. But all which by their necessary operation and effect withhold or take from the judge a part of that which has been promised by law for his service must be regarded as within the prohibition. Here the plaintiff was paid the full compensation but was subjected to an involuntary obligation to pay back a part and the obligation was promptly enforced. Of what avail to him was the part which was given with the one hand and then taken back with the other? Was he not placed in practically the same position as it had been withheld in the first instance? . . . . Apart from his salary a federal judge is as much within the taxing power as other men are. If he has a home or other property, it may be taxed against as if it belonged to another. If he has an income other than his salary it may also be taxed in the same way. And speaking generally his duties and obligations as a citizen are not different from those of his neighbours. But for the common good, to render him in the words of John Marshall:

'Perfectly and completely independent, with nothing to influence or control him but God and his conscience, his compensation is protected from diminution in any form whether by a tax or otherwise and is assured to him in its entirety for his support . . . . We conclude that the tax was imposed contrary to the constitutional prohibition and so must be adjudged invalid.' "

In *Miles* v. *Graham*, 268 U.S. 501, the Court held that even judges appointed after the Revenue Recovery Act of 1918 took effect, an income-tax on their salary could not be levied. The basis of the decision was that under Act III, section 1 of the constitution the salary of the federal judges was to be fixed by the Congress in a statute enacted for the purpose and that the salary as then fixed might not be diminished during his continuance in office under the guise of an income-tax. Therefore, in the Revenue Act of 1928 U.S. Statute, Large Vol. 45, Pt. 1, p. 797, the provision taxing the salaries of the judges was omitted. In Australia a different view is taken. The High Court of the Commonwealth of Australia held that the salary of a judge was taxable on the construction of S. 72 (iii) which says that the justices of the High Court shall receive such remuneration as the Parliament might fix but their remuneration shall not be diminished during their continuance in office. In that case *Cooper* v. *Commissioners of Income-tax for the State of Queensland*, (1907) 4 C.L.R. 1304, the Chief Justice of the state contended that the levying of income-tax on his official salary under the Income-tax Consolidated Act, 1902-4 and the Income-tax Declaratory Act, 1905, violated the term of S. 17 of the Constitution Act, 1867, which provided that the salaries allotted to judges were to be paid during their term of office. The High Court disallowed the claim on the ground that Imperial Acts of 1700 and 1760 regarding the English judicial salaries had never been held to be infringed by general income-tax legislation, though the High Court expressed the view that the repeal of a constitution Act by implication was not possible; a constitution Act must be amended formally and indeed the Court went so far as to hold that the only mode of dealing with such a case was for a formal alteration to be made in the constitution by a separate and independent Act. It is unfortunate that the decision was different from the reasoning.

The Dominion of Canada adopts the same view as Australia. See *Forbes* v. *Attorney-General of Manitoba*, (1937) A.C. 260. In the recent case in *The Judges* v. *Attorney-General for Saskatchewan*, (1937) W.N. 109, the question whether the salaries of Judges appointed pursuant to S. 96 of the British North America Act of 1867 are taxable was referred by the Lieutenant-Governor to the Court of appeal of Saskatchewan,

which answered the question in the affirmative, against which an appeal was brought to the Privy Council. S. 100 of the British North America Act, 1867, enacted that:

"The salaries, allowances and pensions of the Judges of the superior district and County Courts (except the Courts of Probate in Nova Scotia and New Brunswick) and of the Admiralty Courts in cases where the Judges thereof are for the time being paid by their salary, shall be fixed and provided by the Parliament of Canada"

"In the Courts below, it was pointed that the Judges are residents of Saskatchewan, they received a salary out of the revenues of the Dominion and were subject to taxation in respect of their incomes just as other residents and there was nothing in S. 100 to limit the powers of the provinces to tax their salaries, though the word used in S. 100 is 'fixed'. The same word was used in S. 91 (8) of the British North America Act in defining the powers of the Parliament of Canada with respect to the salaries of civil servants and the Court had before it two decisions of the Supreme Court of Canada—namely. *Abbot* v. *City of St. John*, (1908) 40 S.C.R 597 and *Attorney-General of Manitoba* v. *Forbes*, (1934) 3 W.W R. 681, in which a provincial income-tax upon which salaries was upheld. The latter of those two cases was appealed to His Majesty in Council in *Forbes* v. *Attorney-General of Maintoba*, (1937) A.C. 260. The decision of the Supreme Court was affirmed and the argument under discussion was therefore not now open. That, in effect, disposed of the present case also, unless judicial emoluments were, in a class apart, protected by some paramount principle making inapplicable to that form of income a tax imposed by statute in terms wide enough to include it. There was no foundation in the realities of the situation for any such conception, Neither the independence nor any other attribute of the judiciary could be affected by a general income-tax which charged their official incomes on the same footing as the income of other citizens. The Court below agreeing with, though not bound by, two decisions in other Dominions namely *Cooper* v. *Commissioners of Income-tax for the State of Queensland*, (1907) 4 C L. R. 1304, before the High Court of Australia, and *Krause* v *Commissioners for Inland Revenue*, (1929) S.A R. (A.D) 286, in the Supreme Court of South Africa, found no reason for exempting judicial emoluments from income-tax. Their Lordships were of the same opinion and would advise His Majesty to dismiss the appeal."

The American view seems to be more logical and the views of Canada and Australia more sensible.

III. (e) Federal Power of Taxation, Wide

The powers of taxation of the Federal legislature under the heading 'Taxes on income other than agricultural income' is very wide. Not only could it authorise the ordinary income-taxes on salary; but it could levy other income-taxes to meet emergency expenses caused by war, etc., on officers and ministers receiving their salary from the Provincial Government. In *Caron* v. *The King*, (1924) A.C. 999, when the Parliament of Canada enacted the Income War-Tax Act of 1917 and the

amending Act of 1919 whereby every person residing or ordinarily residing or carrying on business in Canada was rendered liable to pay income-tax a minister of the Government of a Province brought an action to declare that the Income War Tax, levying a tax on his salary was *ultra vires*, it was held that the Parliament of Canada had such a power.

IV. Corporations

The incorporation, regulation and winding up of trading corporations, including banking and insurance and financial corporations, but not controlled by a Federated state and carrying on business within that state, are matters for Federal legislation. Corporations not falling within the above description and unincorporated societies such as literary, scientific, religious, etc., fall within the provincial list. A federal corporation ordinarily would be operating in all the provinces or states. And if it is within the competence of the Federal Legislature to create a particular corporation, then it can create such a one though it confines its operations to one particular province or state. Objection could not be raised as to its legislative competence on the ground of its being, in effect a provincial corporation, though a federal corporation in name. A similar question arose in *Colonial Building and Investment Association* v. *A.G. of Quebec*, (1883) 9 A. C. 157. There it was held that the fact that a federal corporation chose to confine the exercise of its powers to one province and to local and provincial subjects did not affect its status as a federal corporation, or operate to render its original incorporation illegal and *ultra vires* of the Dominion legislature and that the corporation could not be prohibited generally from acting as such within the province. In the above case, an association, known as the Colonial Building and Investment Association was incorporated by an Act of the Parliament of Canada (37 Vic., c. 203). The Association was to purchase lands, erect houses and sell them. It confined its operations to the province of Quebec. The Attorney-General of Quebec instituted proceedings for declaration that the defendant association was illegally incorporated and that it has no right to act as a corporation in the province of Quebec.

"It is contended that inasmuch as the association had confined its operations to the province of Quebec, and its business had been of a local and private nature, it followed that its objects were local and provincial and consequently that its incorporation belonged exclusively to the provincial legislature but

surely the fact that the association has hitherto thought fit to confine the exercise of its powers to one province cannot affect its status or capacity as a corporation, if the Act incorporating the association was originally within the legislative power of the Dominion Parliament. The company was incorporated with powers to carrying on its business consisting of various kinds throughout the Dominion. The Parliament of Canada could alone constitute a corporation with these powers; and the fact that the exercise of them has not been co-extensive with the grant cannot operate to repeal the Act of Incorporation, nor warrant the judgment prayed for, namely, that the company be declared to be illegally constituted."

V. Protection of wild birds and wild animals

"Protection of wild birds and animals" is a Provincial subject. Wild birds and animals within a state do not, until reduced to possession, belong to the state and the state have the power to fix the times and the methods by which it may be captured and killed or sold. Provincial legislature has the power to enact law for the protection of wild birds and wild animals. The object of such acts might be either the preservation of wild animals and birds used for food, by the prohibition of killing and capturing and selling them, as in the case of the Nilgris Game and Fish Preservation Act (Madras Act II of 1879) or for the prevention of the indiscriminate killing of wild elephants. etc., as in the case of Wild Elephants Preservation Act (Madras Act I of 1873). Interesting questions might arise as to the validity of certain provincial or state acts relating to their capture and transportation, etc., as arose in the case of *Geer* v. *Connecticut*, 161 U.S. 519, where a law of the State of Connecticut declared unlawful to have in possession game for transportation beyond the state, even though such game had been lawfully killed during the "season". The question arose whether the state could authorise the killing of game and use it in the state, and yet prohibit its transportation to another state. The sole consequence of the provision forbidding the transportation of game killed within the state, beyond the state is to confine the use of such game to those who own it, that is, the people of that state. The proposition that the state may not forbid carrying it beyond her limits involves, therefore, the contention that a state cannot allow its own people the enjoyment of the benefits of the property belonging to them in common, without at the same time permitting the citizens of other states to participate in that which they do not own. It was said in the discussion at the bar, although it be conceded

that the state has an absolute right to control and regulate the killing of game as its judgment deems best in the interest of its people, inasmuch as the state has here chosen to allow the people within her borders to take game, to dispose of it was made and became an object of, state commerce. But the errors which this argument involves are manifest. It presupposes that where the killing of game and its sale within the state are allowed, it thereby becomes commerce within the legal meaning of that word. In view of the authority of the state to affix conditions to the killing and sale of game, it may well be doubted whether commerce is created by an authority given by a state to reduce game within its borders to possession, provided such game be not taken, when killed without the jurisdiction of the State. The common ownership imports the right to keep the property if the sovereign so chooses, always within its jurisdiction for every purpose. The qualification which forbids its removal from the state necessarily entered into and formed part of every transaction on the subject and deprived the mere sale or exchange of these articles of that element of freedom of contract and of full ownership which is an essential attribute of commerce.

VI. Forests and Export duties

The subject of forests is a matter for the provincial legislature, under the Government of India Act. But while legislating upon it, care should be taken to avoid conflict with Federal subjects which are exclusively within the competence of the Federal Legislature. But levying duties of customs including export duties is a federal subject and any law relating to "Forests" should not intrude upon the province of the Federal legislature such as export duties, etc. For example, if the provincial legislature enacts a law imposing a tax upon all timber cut in a province and provides that in the case of timber used in the province there should be a release of nearly the whole of such tax and prohibits the export of it without a certificate that the tax in respect of it has been paid, then that tax would be held invalid by the Federal Court. It has been held in a case from Canada, *Attorney-General for British Columbia* v. *McDonald Murphy Lumber Company, Ltd.*, (1930) A.C. 357, that S. 58 of the Forest Act, 1924, of British Columbia imposing a tax on all timber cut in Canada and providing for a rebate of the tax on timber used in the province, but prohibiting its export without

a certificate of payment of such tax, is invalid because it was an export tax and so fell within the category of duties of customs, an exclusively federal subject.

VII. Customs duties in violation of international law

The subject 'Customs duties' falls within the federal field. Legislation on this topic may cause great difficulty in the actual working out of such enactments. Disputes are bound to come up before the Federal Court as to the validity of such enactments. Laws may be passed by the Federal Legislature imposing customs duties both within and beyond territorial waters though public international law grants to a littoral province jurisdiction over its territorial waters the extent of which is normally taken to be three miles into the sea from the low water-mark. As other nations have got an equal right to navigate the seas beyond the territorial waters, a question might arise whether a federal or a provincial legislation affecting the open seas beyond the three miles limit from the low water mark will be valid and whether any infringement of such a legislation by a subject will be an offence. An interesting case came up before the Privy Council in *Croft* v. *Dunphy*, (1933) A. C. 156, where the respondent's schooner which was registered in Nova Scotia together with her cargo consisting of dutiable goods belonging to the respondent was seized by the Canadian customs authorities while it was sailing for the high seas at a distance of 11½ miles from the coast of Nova Scotia. The validity of the seizure which was effected in pursuance of the powers conferred by the Customs Act of Canada, Revised Statutes of Canada, 1927, c. 42, as amended by 18 and 19 Geo. 5, ch. 16, is challenged on the ground that the Parliament of the Dominion in conferring the powers in question exceeded its legislative competence. The enactments impugned are contained in Ss. 151 and 207 of the Statute as amended. S. 151 provided as follows:—

"If any vessel is hovering in territorial waters of Canada any officer may go on board such vessel and examine her cargo and may also examine the master or person in command upon oath touching the cargo and voyage and bring the vessel into port—(7) For the purpose of this section and S. 207 of this Act 'Territorial waters of Canada' shall mean the waters forming part of the territory of the Dominion of Canada and the waters adjacent to the Dominion . . . . within three marine miles thereof in case of any vessel and within twelve marine miles in the case of any vessel registered in Canada".

S. 207 enacts as follows:—

"(1) If upon the examination of any officer of the cargo of any vessel hovering in territorial waters of Canada any dutiable goods or any goods the importation of which into Canada is prohibited are found on board such vessel with her cargo shall be seized and forfeited."

The question accordingly is whether it was within the power of the Dominion Parliament to pass such legislation purporting to operate at a distance of 12 miles from the coast of Canada. The respondent sued in the Supreme Court of Nova Scotia for the return of the ship, the cargo and damages. The trial Judge upheld the validity of the legislation and hence the seizure and his decision was affirmed by the Supreme Court of Nova Scotia. On appeal, the Supreme Court of Canada reversed the decision. On appeal to the Privy Council, Lord Macmillan, in the course of the judgment upholding the validity of the legislation observed as follows:—

"It may be accepted as a general principle that states can legislate effectively only for their own territories. To what distance seaward the territory of a state is to be taken as extending is a question of international law. But whatever be the limits of territorial waters in the international sense, it has long been recognised that for certain purposes, notably those of police, revenue, public health and fisheries a state may enact laws affecting the seas surrounding its coasts to a distance seaward which exceeds the ordinary limits of its territory. But while the Imperial Parliament may be conceded to possess such powers of legislation under international law and usage, the respondent contends that the Parliament of Canada has no such powers and that though the Dominion Legislature has full power to enact customs laws for Canada, yet it is debarred from introducing into such legislation any provisions designed to operate beyond its shores or at any rate beyond a marine league from the coast In their Lordships' opinion the Parliament of Canada is not under any disability. Once it is found that a particular topic of legislation is among those upon which the Dominion Parliament may competently legislate as being for the peace, order and good government of Canada or as being one of the specific subjects enumerated in S. 91 of the British North America Act, their Lordships see no reason to restrict the permitted scope of such legislation by any other consideration than is applicable to the legislation of a fully sovereign state . . . . Legislation of the Imperial Parliament, even in contravention of generally acknowledged principles of international law is binding upon and must be accepted by the courts of this country, for in these courts the legislation of the Imperial Parliament cannot be challenged as *ultra vires*. It may be that the legislation of the Dominion may be challenged as *ultra vires* on the ground that it is contrary to the principles of international law, but that must be because it must be assumed that the British North America Act has conferred on the Dominion Parliament to legislate contrary to these principles. In the present case, however, there is no question of international law involved for the legislation of the kind here challenged is recognised as legitimate by international law, and in any event the provision impugned has no application to foreign vessels. The sole question is whether the Imperial Parliament in conferring

upon Canada, as it admittedly has done, full power to enact customs legislation bestowed or withheld the power to enact the provisions now challenged No question of any infraction of any international law arises. The question is a domestic one between the Imperial Parliament and the Dominion Parliament."

VIII. Naturalisation

It is for the Federal Legislature to lay down what constitutes naturalisation. By naturalisation one becomes entitled to the protection of the state and liable to the obligations of allegiance to it. The consequences that will follow from naturalisation is for the provincial legislature to decide. But the privileges attached to naturalisation, where these depend upon residence, are quite independent of nationality. In *Cunningham* v. *Tomey Homma*, (1903) A.C. 151, it was held that the Dominion Parliament has the exclusive jurisdiction on the subject of naturalisation, that is, the power to enact how it shall be constituted. The Provincial Legislature has the right to determine what privileges, as distinguished from necessary consequences, shall be attached to it. Accordingly the British Columbia Provincial Election Act (1897, C. 67, S. 8) which provides that no Japanese, whether naturalised or not, shall be entitled to vote is not *ultra vires*. The Privy Council observes in the course of the judgment at p. 156:—

"Could it be suggested that the province of British Columbia could not exclude an alien from the franchise in that province? The truth is that the language of the section (91 sub-S. 25) does not purport to deal with the consequences of naturalisation. It undoubtedly reserves these subjects for the exclusive jurisdiction of the Dominion, that is to say, it is for the Dominion to determine what shall constitute it, but the question as to what consequences shall follow from either is not touched. The right of protection and obligations of allegiance are necessarily involved in the nationality conferred by naturalisation ;but the privileges attached to it, where these depend upon residence are quite independent of nationality". Therefore their Lordships held that a British Columbia Act which prohibited a Japanese, whether naturalised or not, from having his name placed on the register of voters or from entitling him to vote at the elections for the Provincial Legislature is not *ultra vires*. But in the *Union Colliery Company of British Columbia* v. *Bryden*, (1899) 24 A.C. 580, it was held that S. 4 of the British Coal Mines Regulation Act which prohibits Chinaman of full age from employment in underground coal workings, is, in that respect, *ultra vires* of the Provincial Legislature. The difference between these two decisions is pointed out by Leofroi in his Constitutional Law of Canada at p. 114 as follows:—As to aliens the net result of the authorities in reference to his Dominion power seems to be that provincial legislatures cannot legislate against aliens, whether before or after naturalisation, merely as such aliens, so as to deprive them of the ordinary rights of the inhabitants of the Province, although they may so regislate against them as possessing this or that personal characteristic or

habit, which disqualifies them from being permitted to engage in certain occupation, or enjoy certain rights generally enjoyed by the other people in the Province."

IX. Banking, Negotiable Instruments, Money-lending, contracts relating to agricultural land; Land, rights in and over land, transfer and alienation etc.

Banking and negotiable securities are Federal subjects and the Provincial Legislature cannot enact laws affecting them. Acts to regulate all kinds of money-lending to agriculturists might be passed by the Province. But 'money-lending' is a provincial subject and one of the functions of the bank is money-lending and in the course of such business, banks have to use bills, cheques and other negotiable securities. It may be argued that the money-lending business side of banks may be legislated upon by the Provincial Legislature under the subject of "money-lending" and that if a Provincial Legislation on "money-lending" were to affect only incidentally 'banking and negotiable securities', etc., it cannot be attacked. Among other cases, the following recent case may be referred to in support of the above argument. In a case from North Ireland, *Gallagher* v. *Lynn*, (1937) A.C. 863, a question arose as to the validity of the Milk and Milk Products Act passed by the Legislature of Northern Ireland in 1934. The Act provides that a person shall not sell milk except under and in accordance with the Act and unless he holds a licence. The appellant is one of the farmers whose farms are situated in the county of "D" outside the territory of Northern Ireland but within a few miles of the boundary. He had been in the habit of selling milk in Northern Ireland prior to the Act and challenged the validity of the Act. S. 4 of the Government of Ireland Act provides that

"Subject to the provisions of this Act. . . . . the Parliament of Northern Ireland shall . . . . have power to make laws for the peace, order and good government of . . . . Northern Ireland with the following limitations, namely, that they shall not have power to make laws in respect of the following matter in particular, namely . . . . (7) Trade with any place out of the part of Ireland within their jurisdiction."

It was held that the true nature and character of the Act, its pith and substance is that it is an Act for the peace, order and good Government of Northern Ireland in respect of the "precautions taken to to secure the health of the inhabitants of Northern Ireland by protecting them from the danger of an unregistered supply of milk. Though it may

incidentally affect trade with "D", it is not passed in respect of trade and cannot be attacked on that ground. So it does not offend the express limitations of S. 4 (7) of the Government of Ireland Act, 1920. Lord Atkin added at p. 870 that

> "If on the view of the statute as a whole, you find that the substance of the legislation is within the express powers, it is not invalidated if it incidentally affects matters which are outside the authorised field. The legislation must not, under the guise of dealing with one matter in fact, encroach upon the forbidden field. Even a lawful object cannot be achieved by invaiid method."

Thus if the main object of the legislation is to regulate money-lending and in the course of such legislation, it incidentally affect banks and negotiable securities, it may not invalidate such legislation. But it may be argued contra on the strength of the reasoning in *Tenant* v. *The Union Bank of Canada*, (1894) A. C. 31 at 46 that

> "the money-lending on the security of goods, or of documents representing the property of goods was a proper banking transaction."

In this view, both the legislatures, Federal and Provincial, have the right to legislate. In settling the dispute, what is to be the solvent factor? S. 107, Cl. (1) of the Government of India Act of 1935 seems to suggest that provincial law on that subject will be valid till the Federal legislature chooses to enact a different law. Or, are we to be guided by the doctrine of "pith and substance" and say that it falls under the Federal or provincial legislature? Or, are we to say that it falls under the province of one legislature and to the extent it encroaches upon the province of the other, it is invalid according to the rule in *John Deere Plow Co.* v. *Wharton*, (1915) A. C. 330.

'Money-lending' is a term of art and requires a certain degree of system and continuity about the transaction. In *Newton* v. *Pyke*, (1908) 25 T.L.R. 127 at 128, it was held that to come under "money-lending" in the Money-lenders Act of 1900, it is not enough merely to show that a man has on several occasions lent money at remunerative rates of interest: there must be a certain degree of system and continuity about the transaction, but, seeing that the money-lending transactions in which the plaintiff has been engaged for a long time before the date of this bill had been very few, and had been mostly, if not exclusively, with persons who could be described as friends or relations, and that the plaintiff had not advertised or announced or held himself out as a money-lender, it would not be right to say that the plaintiff was a person whose business

was that of money-lending. In *Litchfield* v. *Dreyfus*, (1906) 1 K.B. 584 at 589, it was held that

"not every man who lends money at interest carries on the business of money-lending. Speaking, generally, a man who carries on a money-lending business is one who is ready and willing to lend to all and sundry and provided they are from his point of view eligible."

Considered from this point it is submitted that the inclusion of 'money-lending' in the Provincial Legislative list may not authorise the Provincial Legislature to pass the Madras Agriculturists' Debt Relief Act. It may be argued that the subjects "rights in or over land, transfer, etc." No. 21 in the Provincial list empower the Provincial Legislature to reduce the rate of interest, or wipe off the arrears of interest, or rent. But what is contemplated in the list is an enactment relating to the variety of 'rights' that he has in or that he exercises over the land, and not the variety of obligations that he has created in or over the land in favour of others by mortgages or leases, etc. Further it is submitted that "contracts relating to agricultural land" falls under none of the three lists but falls under the residual powers of legislation of the Governor-General under S. 104. These considerations are likely to raise complicated questions regarding the validity of the Act before the Federal Court.*

Assuming that the Act does not conflict with the Negotiable Instruments Act, a difficult question might arise in the application of the Act regarding promissory notes, etc., made in or drawn outside Madras Presidency but made payable within it. The solution seems to be afforded by the Privy Council in *Borough Council* v. *Australasian Temperance and General Mutual Life Assurance Society*, (1938) A. C. 224, which held that although the law of the place of performance will *prima facie* govern the incidence or mode of performance, the amount of interest to be paid is not a mode of performance but part of the obligation itself and the proper law of the obligation was the law of the place where the document was executed. The facts of the above case were that the appellant, a New Zealand Municipal

* Since these lectures were delivered the question of *ultra vires* character of the Act regarding pronote debts came to be considered by a Full Bench of the Madras High Court in Referred cases Nos, 7, 8 and 9 of 1938 and the Full Bench unanimously held that 'Money-lending' and 'Agriculture' are terms comprehensive enough to make the Madras Agriculturists' Debt Relief Act IV of 1938 *intra vires*, though it indirectly hit at pronotes and other negotiable securities.

Corporation borrowed certain moneys from the respondent in 1926, issued to them debentures and interest coupons at a special rate. The principal and interest were to be paid at Melbourne, Victoria. In 1931, a Victorian statute entitled the Financial Emergency Act of 1931 was enacted which provided that interest should be reduced by 4 shillings and 6 pence for every pound of interest. The question arose whether the appellants are not entitled to get the benefit of this Act. The Privy Council overruled the appellants' contention and decreed the interest in full.

Under the Government of India Act of 1935 the scheme of the division and the distribution of legislative powers is neither exhaustive, scientific nor logical. Many technical terms are left undefined, giving room for scramble to clutch at jurisdiction. The law is bound to become uncertain for some time.

SUMMARY OF ENGLISH CASES.

McLaughlin *v.* Caledonia Stevedoring Company, Limited, (1938) A.C. 642.

Workmen's Compensation—Injury caused by accident in employment—Claim for compensation—Attempt to get employment—What workman must prove—Workmen's Compensation Act (1931), S. 1 (1).

Under S. 1 (1) of the Workmen's Compensation Act, 1931, a workman who is injured by accident arising out of and in the course of his employment will be disentitled to relief if he has not taken all reasonable steps to obtain employment.

Held, that in such a case the workman must prove that he has made attempts to obtain employment which have resulted in failure and he must prove reasonable attempts to get employment. An isolated attempt would not satisfy the provision; the attempts must be genuine and reasonable in volume.

Sifton *v.* Sifton, (1938) A.C. 656.

Will—Construction—Bequest made—Condition subsequent regarding residence of legatee in Canada—Bequest whether void for uncertainty

A testator by his will provided as follows: "I give, devise and bequeath all other property real and personal to my executors upon the following trusts, namely, to manage the corpus of the estate in

accordance with their best judgment continuing any investments that exist at the time of my death if they see fit and to pay to or for my said daughter a sum sufficient in their judgment to maintain her suitably until she is forty years of age, after which the whole income of the estate shall be paid to her annually The payments to my said daughter shall be made only so long as she shall continue to reside in Canada".

Held, that the provision that the payments were to be made "only so long as she shall continue to reside in Canada" constituted a condition subsequent and was void for uncertainty.

SAMMUT *v.* STRICKLAND, (1938) A.C. 678.

Constitutional Law—Ceded territory—Prerogative of Crown to legislate—Grant of representative institutions—Reservation of power —Malta Letters Patent, 1921 *and* 1936—ultra vires *legislation.*

The general rule is that English settlers wherever they went carried with them the principles of English law and the English Common Law necessarily applies in so far as such laws are applicable to the conditions of the new colony. The Crown has clearly no prerogative to legislate in such a case. Where, however, the territory is acquired by cession or conquest, more particularly where there has been an existing system of law, it has always been considered that there was an absolute power in the Crown so far as was consistent with the terms of the cession to alter the existing system of law though until such interference the laws remained as they were before the territory was acquired by the Crown. The principle which excludes cases of settlement from the Royal Prerogative has no application to cases where there has been a cession in the popular sense whether with or without the assent of the inhabitants.

As a general rule the grant of representative institutions once made without the reservation of a power of concurrent legislation precludes the exercise of the prerogative while the legislative institutions continue to exist. Nor is it in doubt that a power of revoking the grant must be reserved, or it will not exist.

Campbell v. *Hall,* (1774) 1 Cowp. 204, discussed.

Held, that Malta is a colony acquired by cession, that it is subject to legislation by the common law prerogative of the Crown and that the Letters Patent of 1936 issued after the revocation of the Letters Patent of 1921 was *intra vires* and legally enforceable.

SHANNON *v.* LOWER MAINLAND DAIRY PRODUCTS BOARD, (1938) A.C. 708.

Constitutional Law—Canada—Provincial Act—Regulation of trade—System of taxation by Dominion indirectly affected—Act if ultra vires—*Delegation of power—Validity.*

The appellants who were dairy farmers were affected by a milk marketing scheme approved by the Lieutenant-Governor in Council

under the Natural Products Marketing (British Columbia) Act, 1936. The appellant contended that the latter Act was *ultra vires* as contravening the provisions as to legislative powers contained in the British North America Act, 1867. It was contended that though the Province had the power to regulate the marketing and production of natural products the legislation in question encroached on the powers of the Dominion.

Held, on a construction of the provisions of the two Acts that the substance of the local Act was to regulate the particular business and that it was not *ultra vires* merely because a licence fee was levied thereunder and the system of taxation reserved to the Dominion was indirectly affected.

Held, further, that it was within the powers of the Provincial Legislature to delegate the so-called legislative powers to the Lieutenant-Governor in Council.

ATTORNEY-GENERAL *v.* WILCOX, (1938) 1 Ch. 934.

Highways—Nuisance—Posts put upon highway—Obstruction to normal use of highway—Suit for injunction—Maintainability—Test as to nuisance

Where there is a public right of way whether a public footpath or public right of way of a wider nature over a defined area of land, the public have the right to use that defined area for the purpose of passing and repassing, and they are entitled *prima facie*, to use any part of it between the hedge or fence or other boundaries of the way, whether it be the grass verge or a portion of the way which is metalled or made up and *prima facie* it is an unlawful act to put anything on a public way which obstructs in the smallest degree the exercise by the public of their right; but the Court will not interfere where what has been done is something which is of so trivial a nature as not to constitute a substantial interference. Where the putting up of posts on a highway made the public engaged in towing process to lift the ropes over the posts and thereby caused inconvenience,

Held, that an action could be maintained to declare the posts to be a nuisance and for an injunction.

HANSCOMBE *v.* BEDFORDSHIRE COUNTY COUNCIL, (1938) 1 Ch. 944.

Highways—Extent of right—Adjoining land—Presumption regarding—Rebuttal—Trespass on adjoining land by highway authority—Liability for trespass.

The rights of the public in a high road are to pass and repass along it, and their right to use the way for that purpose is not limited to that part of the way which is metalled or made up, but extends to the whole highway. When, therefore, the whole portion of a highway

which is bounded by a fence or hedge is capable of being used to pass and repass, the whole portion is deemed to have been dedicated to the public. When, however, a portion of the whole is a ditch which *prima facie* is not adapted for the exercise by the public of their right to pass and repass, the presumption is that the ditch does not form part of the highway. That is a presumption which may be rebutted but the onus lies on those who assert that the ditch is part of the highway.

Held, that the presumption had not been rebutted in the particular case and that the highway authority in entering upon the adjoining land and laying pipes without the owner's permission had rendered themselves liable for an action for trespass.

In re CURRYER'S WILL TRUSTS: WYLY *v.* CURRYER, (1938) 1 Ch. 952.

Will—Construction—Bequest providing for alternative events—Further provision as to order of events—Rule against perpetuities—Applicability.

A testator provided by his will as follows· "On the decease of my last surviving child or on the death of the last surviving widow or widower of my children as the case may be whichever shall last happen I direct my trustees to stand possessed of the trust fund (namely, his residuary estate) in trust for my grandchild or grandchildren living at the period of distribution and the issue then living of my grandchild or grandchildren dying before that period".

Held, that the words 'on the decease of my last surviving child or on the death of the surviving widow or widower of my children' adequately expressed alternative events and the fact that the testator went on to add 'as the case may be whichever shall last happen' is not sufficient to make the gift infringe the rule against perpetuities. Consequently the ultimate gift of capital will be valid if the death of the testator's last surviving child happens after the death of the last surviving widow or widower of the child of the testator.

JOTTINGS AND CUTTINGS.

Without Lawyers.—"Those who have to administer justice," said Lord Atkin, proposing "The profession of the Law" at the banquet to His Majesty's Judges, "know full well the pitiful sight of a layman struggling to make known the real case that he had. They saw the faltering lips and heard the faltering tongue." Judges, in such a case, are habitually indulgent; but the more rope a layman is given in the conduct of his own case, the more he seems to coil it around his neck. Indeed, a man can no more be his own lawyer than—save in the simple affairs of life—he can

be his own doctor. Hearsay is to him almost the only relevance; more than the facts in issue or the documents, it is the motives that matter. Should he lose his case—as he is almost certain to do, unless he is a match for counsel on the other side—can he feel otherwise than disgruntled? He rails, not against himself, but against the law. But would the same man ascend the pulpit or take the operating table? Why, then, with such temerity, face a learned Judge? The fees he thought to save he must, in the end, disburse manyfold.—*L.J., 1938, p. 181.*

The Meaning of Words.—Nor can the world of commerce dispense, with impunity, with the man of law. "Judges were also familiar," Lord Atkin continued, "with the wealthy merchant who had to struggle in some commercial dispute with a document which he had signed but which he had either not read or, having read, had not understood, or which he had prepared himself and conceived to bear an entirely different meaning from that which the law attached to it." Sometimes it seems to be regarded as a matter of honour to take a document as read. Or, again, a layman, drafting his own document, may put down some legal terms of daily currency which he fondly imagines either to be tautologous or simply expletive. True, a merchant may know better than a lawyer the mercantile meaning of mercantile terms used in a contract for the sale of goods. But his contract, swiftly dictated in the office amid a welter of daily correspondence, and phrased either in the terse staccato favoured by commercial men or in the uncertain prolixity of a business letter—how often does it not fail to provide just for those very circumstances that are most likely to arise? The parties may have acted upon a verbal and unrecorded understanding; no deliveries have been made for months, and then, suddenly, long after the delivery period has expired, either the buyer or the seller—according to the state of the market—calls for completion. "In those straits he has to call upon the man of the law." Not that a fight must follow: the aim of the lawyer is not to breed strife, but to compose it.—*L.J., 1938, p. 181.*

The Lord Chancellor's Breakfast.—Among the famous sayings enshrined in such books of reference as Bartlett's "Familiar Quotations," is the ***dictum*** of Lord Stowell, the distinguished judge of the Admiralty Court, and the brother of Lord Chancellor Eldon, that "a good dinner lubricates business." Whether this was borne in mind by the present occupant of the Woolsack we do not profess to know, but his decision to revive what is popularly known as the Lord Chancellor's breakfast—really a

luncheon—which has been in abeyance for some years, is gratifying as a pleasant preliminary to the work awaiting the courts and the profession during the coming Michaelmas sittings. During the regime of Lord Chancellor Selborne, Lord Justice Bowen jocularly poked fun at this time-honoured function, describing it as "such a melancholy spree as Selborne's toast and Selborne's tea"; nevertheless he recognised its purpose, the bringing together in pleasant surroundings of members of the Bench and members of the Bar with its reminder that they all belong to the same great profession whose aim is the administration of justice, and all of whom are united in the common purpose of securing this end without fear or favour.—*S.J., 1938, p. 749.*

If Winter Comes.—Unbombed, and almost demobilised, we emerge in peace (we hope not without honour) from the historic Long Vacation of 1938, and enter with relief and not without hope upon the new legal year. We see before us an additional Court of Appeal, manned by three new L.J.s, whose duties and obligations are not quite the same as those of the Lords Justices we have known; for although some doubts were at first entertained as to whether there was very much difference between them, it is now generally recognised that while the old L.J.s might, the new ones must, serve as puisnes in the Courts below when required by the Lord Chancellor so to do. These heroic and self-sacrificing men, Finlay, Luxmoore and Goddard, L.JJ., deserve some meed of praise; for without any increase of remuneration, or substantial expectation of further reward, they have rendered themselves liable to perform additional duties, and must serve below or aloft according to the captain's orders. On behalf of all those on whose behalf I may be permitted to speak I thank them and wish them well.

Feelings are mixed, and opinions vary concerning the wisdom of enlarging the man power of appeals tribunals; and as one commentator inquired: Will not the illusion that appellant judges are cleverer than puisnes be largely dispelled by the magnitude of their numbers? And is there not a danger that the Law Lords, hard pressed already by appeals from home and overseas, may (unless their strength is also increased) suffer from overwork, and their judgments be still further impaired by the increase in appeals from so many courts of appeal? We must wait and see.—*L.J., 1938, p. 260.*

Judicial Changes.—Regarding the promotions—as they are sometimes called—there is general approbation, although there are

many who wondered whether Macnaghten, J., having regard to his judicial quality and exceptional knowledge of our laws, was asked to volunteer. The answer may be that he is reserved for something even better than one of these new Lord Justiceships. However that may be, there is at the moment no perceptible moaning at the Bar by reason of the judicial changes; save that, in the Chancery Division, all lawyers are not wholly satisfied by reason of the reduction of their judges from six to five. Henceforward there will be, as of yore, two pairs of judges, the odd man out being available for witness actions or relief duties as occasion may demand. If the Chancery men would, in the interests of justice, have the number of their judges restored to six, they might do it by what is known as the accumulation of arrears; yet I hesitate, in times like these, to recommend delaying action as a means of achieving this result. Without support or conscious design anything might happen in the uncertain legal year of 1938/9.

The new Puisnes of the K.B.D. were marked for promotion long ago, and the current commentary is to the effect that their appointment was overdue. The Recorders of Folkestone and of Bath must be aware that their judgeships are in accordance with general expectation.—*L.J., 1938, p. 260.*

The New Lords Justices.—The appointment of Mr. Justice Luxmoore to the Court of Appeal was generally expected. He has been, since the appointment of Lord Justice Clauson, the senior Judge in the Chancery Division, and his work there has eminently qualified him for promotion. Mr. Justice Finlay and Mr. Justice Goddard have also shown the qualities required for an Appeal Judge, and the Court of Appeal, in dividing itself into three parts, will lose nothing of its prestige. The successor to Lord Justice Greer, when his retirement takes effect, has still to be appointed, but there is every probability of the enlarged Court of Appeal being a strong Court. Under the Judicature (Amendment) Act the vacancy in the Chancery Division caused by Mr. Justice Luxmoore's promotion will not be filled until the state of business so requires, but no announcement appears to have been made so far as to how the chambers of the Chancery Judges are to be rearranged. When in accordance with the recommendation of Lord Hanworth's Committee the Probate work goes to the Chancery Division, the sixth Judge will require to be restored, and, incidentally, this will put an end to the anomalous system under which the Probate Division declines to be a "Court of construction," notwithstanding that each Division of the High Court is bound finally to determine, as far as possible, all matters in controversy between the parties.—*L.J., 1938, p. 251.*

The Third Court of Appeal.—Mr. Justice Finlay, Mr. Justice Luxmoore, and Mr. Justice Goddard have been appointed Lords Justices of Appeal. These appointments are made under the Judicature (Amendment) Act, 1938—to use the appropriate short title —which increases the number of the ordinary Judges of the Court of Appeal from five to eight. Power for the Court of Appeal to sit in three Divisions is given by sec. 68 (3) of the Judicature Act, 1925, and the increase will allow this to be done either permanently or at intervals as may be required. In a sense it is in accordance with the recommendation of the Second Report of the Business of Courts Committee that there should be as many Divisions of the Court of Appeal as should be necessary to deal with appeals. But the method is different. Under Lord Hanworth's scheme there were to be no more Lords Justices. The puisne judges were to be themselves, if we may say so, mutual Judges of Appeal. There is, however, in the new arrangement an echo of that scheme, for the new Lords Justices and all ordinary judges of the Court of Appeal hereafter appointed are to be liable to sit as Judges of the High Court. So it would seem that in days of leisure in the Court of Appeal there will be substantial help available for the Courts of first instance.—*L.J., 1938, p. 251.*

The New King's Bench Judges.—But while Mr. Justice Luxmoore's place in the Chancery Division is not to be filled up, it is otherwise with the vacancies in the King's Bench Division created by the promotion of Mr. Justice Finlay and Mr. Justice Goddard, and these have been filled by the appointment of Mr. Roland Oliver and Mr. Croom-Johnson. Both of these have attained distinction at the Common Law Bar. Mr. Oliver, who took silk in 1925, and is Recorder of Folkestone, has been engaged in many well-known criminal and civil cases. While still at the junior bar, he formed one of an interesting array of counsel who appeared for the Midland Bank in the "Mr. A Case," which Lord Darling, who had retired in the previous year, returned to the Bench to try. The others were Sir John Simon, Mr. Rayner Goddard, and Mr. Malcolm Hilbery. All are now on the Bench except Sir John Simon, who has found superior attractions elsewhere. Mr. Croom-Johnson took silk in 1927. He is Recorder of Bath, and since 1929 has been Member for Bridgwater. By the concentration of his energies on judicial work, the King's Bench Division will receive a notable accession. All the appointments are good, but perhaps his is the most promising of a very interesting batch. The new legal year begins as regards the Bench under favourable auspices.—*L.J., 1938, p. 251.*

The New Puisnes.—Croom-Johnson, J., has been M.P. for some years, but his appointment owes nothing to his politics, which may well have been a hindrance rather than a help; for it is well known that Governments do not invariably approve of by-elections for Government seats. At any rate, the appointments of Croom-Johnson, J., and Oliver, J., were, in the opinion of the Bar, fully justified by forensic merit, achievement and prestige. What is more, that appears to be the view of greater authorities, that is to say, of the barristers' clerks, who rarely err in their estimate of the quality of those who work for them; and their opinion is fortified by those of other persons hardly less authoritative, namely, the managing clerks of solicitors who do business in litigation.

The practice of Croom-Johnson, K.C., was for many years general, large and lucrative in the Supreme Court; while that of Oliver, K.C., who some years ago chiefly shone in criminal trials, has for a long time been mainly in civil actions in the Supreme Court, including the Court of Appeal, and he has won notable victories in the House of Lords itself.

Greer, L.J., is about to retire—a regrettable event—for he is beyond dispute one of the best and most generally and justly esteemed of post-war Lords Justices. His retirement will mean another promotion and another appointment to the Bench.—*L.J., 1938, p. 260.*

If They Would.—Who will be appointed and who promoted will presently appear. Meanwhile, we know that there are a certain number who might become judges if they would, and will not. Of such are Hastings, K.C., Birkett, K.C., Monckton, K.C., and certain others; and the belief is generally entertained that Sir John Simon, although at the moment he is not a practising barrister and therefore ineligible to compete for the Scrutton Cup, would not be refused a judgeship if he intimated a longing for it, on any ground other than the Government desire and his own conviction that he should continue for the present as Chancellor of the Exchequer. It is even thought that if Maugham, L.C., retired, Sir John would show the same aversion or turning away from the Woolsack which once, long ago, he made manifest, in memorable words, when Mr. Asquith was Premier.

The name of Mr. Jimmy Cassels, K.C., has been mentioned with confidence, and it is certain that, in the opinion of the Common Law men of the metropolis and of the South-Eastern Circuit, no more popular appointment could be made. Le Quesne, K.C., and Hallett, K.C., are other persons who are said to be marked, on their merits, for ultimate promotion: while the name of Mr. Harold Murphy,

K.C., is mentioned frequently when the prophets indulge in speculation and forecast.—*L.J., 1938, p. 260.*

Sir Duncan Kerly, K.C.—Placid, pale, clear in exposition, and complete master of his subject and his case, Sir Duncan Kerly, K.C., was one of the outstanding two who for many a year were the undisputed leaders in all important cases relating to patents and to trade marks. Although he retired from practice several years ago (in 1931), he was a familiar figure to all Templars, and his death at the age of 75 is deeply deplored. He was a Bencher of the Inner, and was appointed Chairman of the Board of Referees in succession to the late Sir Charles Bine Renshaw at or about the end of the Great War.

You could not tell from his accent that he had Scottish blood, but you might correctly infer it from his Christian or baptismal names of Duncan Mackenzie. Son of a solicitor, he was educated at Merchant Taylors' and St. John's Cambridge, where he was Parkin Exhibitioner. In 1884 he was ninth Wrangler, and took a First in Law in the year following. He was MacMahon Law Student in 1886, a Fellow in 1887, in which year he was called to the Bar by the Inner Temple.—*L.J., 1938, p. 261.*

More about Judicial Salaries.—In the early decades of the nineteenth century various changes were made in the remuneration of the judiciary, this being sometimes on an ascending scale and sometimes in the reverse direction, the reasons given for these changes being curious and interesting. In the reign of George IV. a series of Acts was passed, one dealing with the salary of the Chief Justice of the Court of King's Bench, another with that of the Chief Justice of the Court of Common Pleas, and a third with the Master of the Rolls, the Vice-Chancellor of England and the Chief Baron of the Court of Exchequer. The first of these Acts was 6 Geo. 4, c. 82, and is entitled "An Act to abolish the sale of offices in the Court of King's Bench in England, to make provision for the Lord Chief Justice of the said court and to grant an additional annuity to the said Lord Chief Justice on resignation of his office." The Act recites that certain offices, namely, Clerk of the Treasury and Custos Brevium, Filazer, Exigenter and Clerk of Outlawries of the Court of King's Bench were in the gift of the Lord Chief Justice and deemed to be saleable by him as and when from time to time becoming vacant, while other subordinate offices were in the gift of those officials and saleable by them, and it was expedient that these various offices should no longer be saleable, but that vacancies should be filled by the Lord Chief Justice with-

out fee, gratuity or reward being exigible by him. The Act then proceeded to declare that "it will be necessary to make due provision for maintenance of the honour and dignity of the office of the Lord Chief Justice in lieu of the valuable patronage hitherto enjoyed by him," and this was accomplished by enacting that he should henceforth receive a salary of £10,000.—*L.T., 1938, p. 293.*

Provision for the other Judges.—Two statutes immediately following that just mentioned deal respectively with the salaries of the Lord Chief Justice of the Common Pleas, the Master of the Rolls, the Vice-Chancellor of England, the Chief Baron of the Court of Exchequer and the Barons of the latter tribunal. The Act which deals with the Chief Justice of the Common Pleas has a recital similar to that which was concerned with the Chief Justice of the King's Bench, namely, that a number of offices which, till then, had been in the gift of the Chief Justice—those offices including the Second Prothonotary and Clerk of the Juries—should no longer be saleable, and consequently, this addition to the Chief Justice's remuneration being no longer available, an increase in his official salary should be granted, and accordingly it was raised to £8000. The next statute increased the salaries as follows: the Master of the Rolls, £7000; the Vice-Chancellor of England, £6000; the Chief Baron, £7000; and the Barons, £5500.—*L.T., 1938, p. 293.*

Reductions.—The next important alteration was effected by an Act passed in 1851 (14 & 15 Vict., c. 41), which is certainly curious. It is entitled "An Act to regulate the salaries of the Chief Justice of the Court of Queen's Bench and Chief Justice of the Court of Common Pleas," and then follows this curious recital: "Whereas ....the annual salary to be granted to the Chief Justice of the Court of Queen's Bench at Westminster is fixed at the sum of £10,000, and the annual salary to be granted to the Chief Justice of the Court of Common Pleas at Westminster at the sum of £8000, and whereas from the death of the Right Honourable Charles Lord Tenterden the salary of £8000 has been granted to and accepted by the Chief Justice for the time being of the said Court of Queen's Bench instead of the salary of £10,000; and whereas the salary of £7000 has been granted to and accepted by the present Chief Justice of the Court of Common Pleas....instead of the salary of £8000 fixed by the said Act: and whereas it is expedient that the salaries of the said offices of Chief Justice of the Court of Queen's Bench and Chief Justice of the Court of Common

Pleas should be regulated as hereinafter mentioned"; and thereupon it is enacted that the salaries of the two offices should be respectively £8000 and £7000. What precisely was the inner history attending this change in the amount of the salaries does not appear, but it surely must be set to the credit side that the holders of the two high judicial offices should have accepted, apparently without demur, this reduction in their emoluments.—*L.T., 1938, p. 294.*

Present-Day Salaries.—These have long been at the figure at which they stand to-day and are as set out in the Judicature Act, 1925, namely: The Lord Chancellor, £10,000; the Lord Chief Justice, £8000, The Master of the Rolls, £6000; the Lords Justices and the puisne judges, £5000. The sums are not extravagant in amount, and, moreover, they are subject to severe abatement by the operation of the Income Tax Act. To many of those who have accepted judgeships the change from the Bar to the Bench has been the reverse of advantageous from the monetary point of view. At one time it was popularly believed that when a puisne judge was promoted to the Court of Appeal it involved an increase in remuneration, but this was a misconception. As Mr. Justice A. L. Smith (about whose language there was, as Lord Bowen once said, "a distressing nudity") remarked when congratulated on his promotion to the Court of Appeal: "No more wages, you know!"—*L.T., 1938, p. 294.*

Separate Judgments.—The *Times*, in a recent leading article made the third Court of Appeal, which is now staffed for work when its services are required, the occasion for a discussion of law reporting, and of the practice of Judges, where several sit together, to give, save in the Judicial Committee and the Court of Criminal Appeal, separate judgments. On this latter point—the giving of separate judgments—the hope is expressed that "one Court one judgment" will become the rule. The present practice savours on the contrary of *Quot judices tot sententiae.* As to which produces the more interesting results there can be no doubt. With all respect to the Judicial Committee, its single judgments—and how much difference of opinion they cover may not be revealed—are very much inferior in interest to the varied judgments of the House of Lords. And since the two tribunals have largely the same personnel, the inferiority is due solely to the different methods of announcing the result. The majority judgments in the House of Lords give the decision; but we can see the conflicting principles which have been tested, and the understanding of the law gains by the conflict, even though the result cannot be disputed.

The House of Lords are always right, because, as Lord Justice Scrutton is reported to have said, there is no one to tell them they are wrong. The House cannot even go back on its own decisions and reverse them, as can the Judicial Committee and the United States Supreme Court in a later case. That this should be so may be unfortunate, but the rule was decisively affirmed by Lord Halsbury, L.C., in *London Tramways Co.* v. *L.C.C.* (1898, A.C. 375; 67 L.J. Q.B. 359).—*L.J., 1938, p. 269.*

Judge-made Law.—It is not too much to say that the House of Lords reports would lose half their interest if dissent was not admitted. Of course, in the Court of Appeal the plan would not work at all. There would have to be not three, but ten Courts if the Lords Justices had to sit, like jurymen, till they could agree on a judgment. Indeed, without a dissentient judgment, such as that of Lord Justice Moulton in the *in camera* Scott case (1913, A.C. 417; 82 L.J. P. 741), how would the House of Lords get its cue to reverse the Court of Appeal? So for the present we shall be content to see judicial divergence recorded in the law reports, the majority judgment prevailing, and in a Court of two, the junior Judge withdrawing his judgment. The reporting of decisions is, of course, a necessity, as much so as the printing of Acts of Parliament, for case law is a more prolific source of law than legislation, though Parliament is a good second. Moreover, no small part of case law is devoted to deciding what Parliament meant. Of course, it is said that Judges do not make law; they only apply old principles to new circumstances. The matter is discussed by writers of repute: Grey in *The Nature and Sources of Law*; Allen on *Law in the Making*, and we need not pursue it here. For practical purposes it is sufficient that lawyers have to go for the law to the reported cases even more than to the statutes, and though there is no gainsaying an Act of Parliament when it is to the point and clear, advice is more often given, and a case won, on the strength of an apt decision.—*L.J., 1938, p. 269.*

Law Reporting.—As to law reporting, which was the other matter dealt with in the *Times* article mentioned above, this, as we have said, is a necessity. The only question is how and to what extent it should be done. As to how a report should be compiled, it is suggested that space could be saved by omitting citations from earlier reports. Sometimes this is done, especially where the citation is long. But to cut out citations as a general rule would main the report and deprive it of much of its utility. It may be granted that the consulting of numerous reports imposes a burden on the

lawyer, and not unnaturally it is reflected in costs. But this is incidental to the English system of jurisprudence. There is no suggestion that the system should be altered, and the points to be considered are what should be reported and how can the decisions be made readily accessible. Sir Frederick Pollock said in a paper on English Law Reporting, read before the American Bar Association in 1902 and printed in his *Essays in the Law*, "Utility to the profession is the only test." That is quite true, but in practice opinions may differ as to what is useful to the profession. The value of the reports, of which Sir Frederick was for so many years the distinguished editor, is not doubted; also of the *Times Law Reports*, to which attention is called in the leading article referred to above; and of other contemporary reports. The profession, indeed, has reason to be grateful for the good work done by the law reporters. And the somewhat more liberal interpretation of what is useful to the profession which is adopted in the *All England Law Reports* and the acceleration of production is also doubtless appreciated, while as to tracking down a case, the Digests have turned that into a game.—*L.J., 1938, p. 269.*

Sir Thomas Hughes.—Sir Thomas Hughes, K.C., who died last Monday, at the age of 82, was for a good many years before his retirement, in 1931, the most prominent leader at the Chancery Bar. Coming of a Lancashire family, and educated at Birkenhead School, he went to Trinity College, Cambridge, and after entering at Lincoln's Inn, and being called to the Bar in 1880, he joined the Northern Circuit and practised for many years at Liverpool. In 1898 he came to London and, taking silk, joined the Chancery Bar. Those were the days when Chancery leaders attached themselves to particular Judges, unless they held themselves ready to "go a-roaming" for special fees. Hughes, notwithstanding his ability, never went special, though his ties of attachment changed from Mr. Justice Byrne to Mr. Justice Farwell. Finally, when in October, 1900, Ingle Joyce went to the Bench of the Chancery Division in succession to Mr. Justice Stirling, who became a Lord Justice, Hughes joined Mr. Justice Joyce's Court, and practised there, with Younger as an even rival, until the latter was appointed to the Bench in 1915. Hughes was an old pupil of Ingle Joyce, and rumour said that his persuasive geniality contributed materially to the conduct of the business of the Court. It is singular that he never himself became a judge, for his temperament and learning, and his position at the Bar, seemed to

make him an obvious choice for appointment. However, judicial preferment did not fall to him, but from 1900 he served as a member of the Bar Council, and became Chairman in 1920, a position which he held till his retirement from practice. In 1926 he was knighted. Through all these later years he acquired a special place in the esteem and affection of the Chancery Bar.—*L.J., 1938, p. 285.*

BOOK REVIEWS.

THE LAW RELATING TO PLACES OF ENTERTAINMENT AND AMUSEMENT. Published by K. Venkoba Rao, M.L., Advocate, 1/31, Nallathambi Mudali Street, Triplicane, Madras. 1938 Edn. Price Rs. 15.

This book, as is obvious from the title, is a comprehensive treatise dealing with almost all the activities of the people for whiling away their leisure hours. No doubt one feels much struck by the literary language of the author even in the preface to this volume and our interest is only increased to know, as we progress, that the author has combined much diligence with precision of ideas in the preparation of such a ponderous volume.

We cannot say exactly which particular chapters or subjects here will be more interesting than the rest, for there will be as many orders and degrees of preferences as there are readers. The author does well to introduce in his first chapter the main outline of the cinematographs, sketching the history of the screen industry in the various parts of the world. But cinematographs are again dealt with separately in Chapter III where the English Film Acts have been duly noticed including the Films Act of 1938 which came into force only in April, 1938. As regards Theatres and Dramas we have a fund of information given in Chapter II and the relation between the theatrical proprietor and the artiste has been adverted to in the proper place and with due proportion of its importance. The English authorities on the subject have been carefully collected and discussed, and in the last portion of the same chapter the Indian Law relating to theatres is also dealt with. The Entertainment Tax Acts passed by the various Indian Provincial Legislatures in recent years have been mentioned in the Index with full texts as well as the Rules framed under them. The interesting topic of libel actions by Sound Films necessarily find a place in Chapter IV whose interest is really enhanced by the elaborate discussion of the Rasputin Action. The next chapter gives an idea of Sunday Entertainments with their legal incidents. About the spectators of a Cricket Match—not an absorbing game merely but a growing

craze with the young and old in modern times—and their rights against the authorities regarding accidents caused by the hitting of balls, we have a chapter where the subject is put to a critical examination in all its entire legal bearing. The next few chapters have a good deal of discussion about Billiards, Races, Lotteries and Crossword Competitions, etc. In Chapter XI we are provided with knowledge of the existing law in America pertaining to entertainments and amusements of the kind dealt with in the previous chapters with a lot of case-law on the various subjects. Chapter XII specially gives an account of the Cinematographs Bill in the British Parliament and the important speeches of members during the three readings of the Bill. The appendices contain full and extensive texts of the various English and Indian Acts grouped under proper headings.

It needs no great imagination to realise that a subject like the one the author has chosen has great possibilities of growth under modern conditions with the great scientific advances made in the Radio and the Television. We therefore hasten to congratulate the young author for being almost the first in India to have written a sumptuous treatise on this little explored branch of the law and given adequate information for lawyers and laymen alike. We also believe that the work will be found very useful to magistrates, police officers and other licensing authorities.

SPEECHES OF BHULABHAI DESAI. Published by G. A. Natesan & Co., Madras. 1938 Edn. Price Rs. 3-8-0. Foreign *7s. 6d.* Postage Extra.

We know how eminent English Lawyers like Erskine and Russell, superb successes at the Bar, turned out to be great failures in the House of Commons. Perhaps it was F. E. Smith (later Lord Birkenhead) who proved the exception to the general rule that a lawyer with a reputation made in his profession is more often disappointing in Parliament. We have for the lawyer of our country the further handicap of a foreign language as the vehicle of expression, apart from the many other disadvantages resulting from lack of adequate training and tradition in parliamentary procedure. It is therefore doubly praiseworthy if an Indian lawyer of repute should claim the palm for parliamentary eloquence and debating capacity of a high order. Sri Bhulabhai Desai has now been acclaimed a very successful party leader and a splendid parliamentarian.

When he joined the Congress he had already made his name in the legal profession. Naturally therefore his debut into

the Assembly was watched with keen interest by all sections of the public. Needless to say that he has satisfied all the canons by which a member of a deliberative body modelled on the House of Commons in its procedure should be judged. He has shown great powers of sustained and clear thinking upon any subject he might be called upon to deal with in the Assembly. Facility of speech and a naive realism added to his own individual sterling qualities have gained him the amount of confidence and leadership that at present he enjoys. What powerful influence the art of speech has on us and what subtlety and versatility the legal brain is capable of when faced with weighty national problems as well as the huge opposition of an unsympathetic Government, will be evident from a perusal of these copious speeches.

We are really thankful to Messrs. G. A. Natesan & Co., for the very idea of collecting the speeches of an outstanding advocate, no less renowned for his patriotism and sacrifices in the cause of his motherland. One has only to read carefully his utterances upon the many ...cs such as Indian Defence and the Criminal Law Amendment ...ct to be greatly impressed with the legal acumen and pow... of analysis that he brought to bear upon the deliberations of the Assembly. We feel real pleasure in commending such a valuable publication to the discerning public.

STATUTE LAW RELATING TO RELIGIOUS ENDOWMENTS by P. R. Ganapathi Aiyar, Advocate, Madras. Price Rs. 4.

Mr. P. R. Ganapathi Aiyar is a recognised authority on the subject of Religious Endowments and his treatise on Hindu and Mahomedan Endowments is the leading text book on that branch of law. The profession was eagerly looking forward for a new edition of the book as there has accumulated a large mass of case-law on the subject in the course of over twenty years that have elapsed since the publication of the last edition and so far as Madras is concerned, the local legislature has repealed Act XX of 1863 and an altogether new enactment has taken its place. The book under review is not a new edition of his book on the Hindu and Mahomedan Endowments; but the learned author has traced in it the growth of the Statute Law relating to Religious Endowments from the commencement, stating their effect without giving the text of the statutes themselves. The learned author has not rested content with tracing the growth of the statute law on the subject in British India, but has dealt with the regulations on the subject in the Indian States as well. He has given his valuable suggestions as to how the provincial governments should deal with these public trusts and their endowments in the future. The appendices

give the text of the various regulations in the Indian States on the subject and the Charitable and Religious Trusts Act of 1920. It is needless to add that the learned author has dealt with and discussed all the relevant decisions. We have every hope that the book will be found a very instructive one and will be used with profit both by the Bench and the Bar.

FOR NECESSARY ACTION.—Speeches and Judgments of Sir Douglas Young, Edited by Shri Ram, B.A., LL.B., Advocate, High Court, Allahabad and V. M. Kulkarni, B.A., LL.B., Editor, Indian Cases, Lahore. Published by the Indian Cases, Ltd., Lahore.

This is a collection of some of the notable speeches and judgments of Sir Douglas Young, the Chief Justice of the Lahore High Court on topics of public interest. It is well known that Sir Douglas Young has set his heart in rooting out corruption in the public service in the Punjab and has achieved a large measure of success in his laudable endeavour. The speeches are refreshing in their candour and are also marked by sympathy. The subjects dealt with in the speeches are not merely of local interest but have a wider appeal to all reformers in every field of public activity. The book is not a legal text book and will be read with profit by all those interested in the welfare of the future of this country.

MEDICAL JURISPRUDENCE by M. A. Kamath, M.B. & C.M. (4th Edition), 1938. Published by Messrs. Butterworth & Co. (India), Ltd. Price Rs. 6.

This edition appearing as it does nearly nine years after the third edition has come none too soon. The subject which is of interest to lawyers and medical men has been dealt with in all its branches lucidly and with precision. Since the publication of the last edition, there has been an accumulation of learning on the subject necessitating alterations and additions in the present edition. An additional feature of this edition is the addition of a chapter on the Workmen's Compensation Act. The author having had long experience as a member of the medical service has drawn largely from it in illustrating the several points dealt with in the course of this book. We have every hope that the book will be found useful as a reliable hand book on the subject, specially suited to Indian conditions.